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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
David C. Hollister, Director

LINDA A. WATTERS
COMMISSIONER

July 25, 2005

Michigan Delegation
United States House of Representatives
Washington, D.C. 20515

RE: H.R. 2355 – The Health Care Choice Act

Dear Representative:

I would like to express serious concerns and opposition to H.R. 2355, the Health Care Choice Act, which may be considered on the floor this week. I understand that many bills may be taken up as part of "Health Care Week," and I wanted to flag this particular legislation and share its potential impact on Michigan citizens.

Like the rest of the country, Michigan has been hit hard by rising health care costs, which result in higher insurance premiums. I certainly appreciate, understand, and share the desire to find solutions to health care cost increases and subsequent growing uninsured crisis, but I cannot support federal legislation that would disadvantage higher-risk individuals or preempt critical consumer protections for Michigan citizens.

This legislation would preserve some level of State oversight, however, I believe that it is not in the public's best interest to allow the sale of health insurance in a State without oversight of the resident regulator. Such a policy is an open invitation to fraud and abuse.

Destabilization of the Market - I believe that H.R. 2355 would cause a negative disruption in the individual market, place vulnerable populations at risk, and eliminate many important consumer protections. The bill would allow an insurance company to choose a single State in which to license its individual health insurance product and then sell it in any other State, avoiding most of that State's protections and benefits provided by its laws and regulations. This would clearly promote a "race to the bottom" as insurers would be greatly rewarded for licensing their individual products in States with less regulation and fewer personnel to oversee what could be a large influx of new products.

Because there are no limitations on individuals moving in and out of the general pool, an individual who had coverage from an out-of-state insurer could seek the more comprehensive coverage guaranteed to be available in Michigan under the federal Health Insurance Portability and Accessibility Act (HIPAA) if circumstances warrant from an insurer that is subject to Michigan's statutory requirements. This tactic is known as adverse selection, selecting the more comprehensive coverage only when it is needed.

The individual would then be free to switch back to the less-comprehensive out-of-state benefit plan when the comprehensive coverage is no longer needed. This makes coverage more expensive, if not unaffordable, to those whose only choice is to purchase coverage in the general pool.

Financial Implications - An insurance company wishing to operate in Michigan today must meet strict financial requirements before obtaining a license and being able to sell its policies to Michigan citizens. Commercial insurance companies, Health Maintenance Organizations (HMOs), and the Blue Cross Blue Shield of Michigan (BCBSM) all currently operate under very specific statutory solvency requirements. These requirements are in place to ensure that each entity has sufficient resources to avoid financial failure. We cannot be sure that the regulator in a company's home state is looking out for the welfare of Michigan consumers when that company obtains its license.

Guaranty Fund Coverage is Lacking - The Michigan Life and Health Guaranty Fund is available to cover Michigan citizens who purchase coverage from a company legally operating in Michigan today in the event of that company's failure. This legislation does not require the home state of a company to have adequate guaranty fund protection. An individual not covered in the event of a company failure would be left on his or her own to seek redress from the home state regulator, if any is available. Ultimately, Michigan's Medicaid budget could be at additional risk if individuals in need of coverage find themselves without coverage and have nowhere else to turn.

Undermine Consumer Protections - H.R. 2355 would also undermine key State consumer protections. Michigan has established a number of patient protections, including: the Patient Bill of Rights enacted in 1997, that requires each health plan to implement an internal grievance procedure to work out coverage-related issues; the patient's right to independent review act (PRIRA), enacted in 2000, that requires an independent external review of adverse decisions by the insuring entity; the timely claims processing and payment procedure enacted in 2002; a requirement that health plans establish a program for diabetes education and disease management, and many others. H.R. 2355 would eliminate these protections, wiping out significant progress that has been made on behalf of Michigan consumers.

HIPAA Implications - As you may or may not be aware, Michigan is an "alternative mechanism" state under the federal HIPAA provisions. This means that Michigan-licensed commercial carriers do not have to offer coverage to those individuals with a pre-existing health condition. BCBSM, Michigan's insurer of last resort, is required to insure any individual who is a Michigan resident and who applies for coverage. BCBSM is unable to rate on health status in the individual market. If the individual is HIPAA eligible, BCBSM cannot exclude any pre-existing conditions; and if not HIPAA eligible, BCBSM can only exclude coverage for a pre-existing condition for up to 6 months. In other states, companies must offer the coverage, but can exclude pre-existing conditions indefinitely under the policy. H.R. 2355 would insert an infinite number of variables in the marketplace, and since the application of HIPAA in the states is not

uniform, it would make it extremely difficult for Michigan consumers to understand what type of HIPAA protection they might have in a policy they purchase.

OFIS Unable to Intervene - Particularly disturbing, if H.R. 2355 were enacted, is the fact that the Michigan Office of Financial and Insurance Services would be unable to assist our citizens and your constituents because we would have no jurisdiction over a company not licensed in Michigan. This would leave consumers able only to seek assistance from the insurer's home State. While that may be a theoretical possibility, in the real world of tight State budgets it would be extremely difficult to fully assist a nonresident consumer in a distant State.

Conclusion - States have acted aggressively over the past many years to stabilize and improve the individual health insurance market. Through the National Association of Insurance Commissioners, state regulators have developed ways to ease the regulatory burdens on insurance companies and streamline regulation. It is critical that the federal government and the States work closely with healthcare providers, insurers and consumers to implement reforms that will curb health care spending and make insurance more affordable for all.

I remain committed to improving access to affordable insurance for individuals in Michigan. We must find solutions that will be effective and beneficial to our citizens and not lead to greater problems in the future. H.R. 2355 is not a viable, sound solution and I urge you to oppose it.

If you would like to further discuss this issue, or if you have any questions, please feel free to contact my Deputy for Policy & Legislation, Krystal Rourke at (517) 373-1866.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda A. Watters". The signature is fluid and cursive, with the first name "Linda" being more prominent.

Linda A. Watters
Commissioner